IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTER PATENT APPEAL NO.248 OF 2002
IN
WRIT PETITION NO.2274 OF 2002

1. NRC LIMITED
   Mohone, Dist. Thane.

2. The Managing Director
   NRC Limited, Mohone.

3. Mr. M.S. Shekhawat
   Vice President (Pers. & Admin.)
   NRC Limited, Mohone. ...Appellants

Vs.

1. S.P.Borde
   6B, Priyadarshini Apartment
   Ramdaswadi Syndicate,
   Murbad Road Syndicate, Kalyan.

2. B.M. Quadri
   R.S. 5-4-4 NRC Colony
   Mohone, Kalyan.

3. D.S.Patil
   DN6 NRC Colony
   Mohone, Kalyan.

4. S.R.Kamath
   7 Gujar Mansion
   Opp. Shiv Mandir
   Karnik Road, Kalyan(W).

5. T.M.Mashal
   EN6-61 NRC Colony
   Mohone, Kalyan.

6. G.M.Awari
   EN-7-84 NRC Colony
   Mohone, Kalyan.

7. K.K. Kunder
   D-4, NRC Colony
   Mohone, Kalyan.

8. S.K.Dashpute
   Room No.408 C-Wing,
   Mahavir Complex, Kalyan.

9. R.K. Nair

R.S.5-14-8 NRC Colony
Mohone, Kalyan.

10.D.R.Jadhav
E-3 NRC Colony
Mohone, Kalyan.

And 105 Ors. ...Respondents

Mr.P.K.Rele with Mr. Rajesh P. Rele with Mr.Tayade for Mr. Piyush Shah for Applicants

Smt.Meena H. Doshi for Respondents 1 to 6, 8 to 10, 13 to 27,29,32,34 to 36, 39 to 41, 43, 47 & 48, 51, 53 to 60, 62, 63, 65, 67, 68, 70, 72, 73, 75 to 81, 86 & 87, 89, 91 to 95, 97,98,101 to 103, 105 to 112,114 & 115.

CORAM: H.L.GOKHALE &
SMT.R.S.DALVI,JJ.
DATED: 16TH SEPTEMBER, 2005

ORAL JUDGMENT (PER H.L.GOKHALE,J.)

1. Heard Mr. Rele in support of this Appeal. Mrs. Doshi appeared for Respondents. This Appeal seeks to challenge the order passed by Single Judge on 17th April, 2002 in Writ Petition No.2274 of 2002 whereby the Petition filed by the Respondents was admitted and an interim order was passed directing the Appellants herein not to terminate the services of Petitioners Nos.22 to 115 otherwise then by due process of law. The learned Judge observed that order was passed considering that primafacie they were workmen. The learned Judge stayed the orders of the Labour Court dated 24th August 2001 and the Industrial Courts dated 22nd March, 2002. The learned Judge however directed that pending complaints be disposed of on or before 31st December, 2002.

2. The Appellant Company is aggrieved by this interim order whereby it is restrained from terminating the services of these workmen otherwise then by due process of law and particularly with respect to the observation that this is on the primafacie basis that they are workmen. Mr. Rele learned Counsel appearing for the Appellants has stated that from amongst the various workmen who are involved in the pending complaints, the Appellant Company is disputing the status of 61 persons only. This is in addition to 21 employees who have been terminated in the meanwhile. As far as these 61 persons are concerned the Appellant Company will make available a list of them to the Respondents or their Counsel. It is the contention of the Appellant Company that they are not workmen, whereas that of the Respondents that they are very much workmen. The apprehension of the Appellant is that the learned Trial Judge will be impressed by the observation of the single Judge that the persons concerned are primafacie workmen. We therefore, clarify that the observation of the learned Single Judge is only a primafacie observation as he has himself stated. The learned trial Judge is expected to decide the complaints pending before him on the merits of the evidence that will be tendered before him. Obviously he will decide the complaints on that evidence without being influenced by this primafacie observation. We

further clarify that he will decide the matter on its merits without being influenced by any of the observations made by the learned single Judge at the admission stage, on as much as they are observations made to justify only the admission of the Petition.

3. The Appellant is having apprehension with respect to the other observation that they are not to be terminated otherwise then by due process of law. Mrs. Doshi appearing for the Respondents submits that all the persons concerned are covered under the standing orders and due process will mean that if at all any action is sought to be taken against any person that will have to be under the standing orders. Mr. Rele however, submits that according to the Management 61 of these employees fall in the non-workmen category and would be out side the standing orders. To take care of this apprehension we clarify that during the pendency of the complaints if the Appellant is required to take any action against any of these 61 persons, whom it claims to be of the non-workmen category, it will be open to the Appellant to apply to the Single Judge to seek the clarification as to whether the person concerned should be considered as non-workmen and whether the action be initiated out side the standing orders. Needless to state that any such application will be decided only after the notice and after hearing the Respondents.

4. As far as the pending complaints are concerned the grievance of the Appellant is more than 3 years have gone and the matters are still pending. Mrs. Doshi assures that the Respondents are not interested in delaying the matters. She states that affidavits of some 10 employees are already ready and they will be made available to the Appellants in lieu of their examination-in-chief so that their cross examination may proceed immediately thereafter. As far as the remaining employees are concerned she proposes, if possible, to group them into smaller groups and will file affidavit of one employee to represent each of those groups. She further stated on instructions that all these affidavits will be made available to other side within 2 1/2 months from today i.e. by the end of November, 2005. In view of the evidence of the employees being tendered on affidavit it will be easier for the learned Judge to proceed with the complaints faster. We make it clear that since 10 affidavits are to be filed within a week or so the evidence of those employees can start immediately thereafter.

5. As far as the employees other than the 61 are concerned, the order passed by the learned single Judge will continue to operate, namely, that their services will not be terminated without following due process of law. The contentions of both the parties on merits of their submissions will be available to

them before the trial Court.

6. The learned Judge will endeavour to dispose of all these complaints preferably by the end of June, 2006.

7. The Appeal stands disposed of with this order. The order passed by the learned single Judge stands modified to this extent.

(H.L.GOKHALE,J.)

(SMT.R.S.DALVI,J.)